59 Minn. 332, 61 N. W. 324, 150 Am. St. Rep. 407. It is hardly in accord with the decided cases. By the weight of authority mandamus will be granted to enforce the right of a stockholder to inspect the books of a foreign corporation, where the books and their custodian are within the jurisdiction of the court. *Swift* v. *Richardson,* 7 Houst. (Del.) 338, 6 Atl. 856, 40 Am. St. Rep. 127; *State ex rel. English* v. *Lazarus,* 127 Mo. App. 401, 105 S. W. 780; *Andrews* v. *Mines Corporation,* 205 Mass. 121, 91 N. E. 122. *Contra, Kinney* v. *Mexican Plantation Co.,* 233 Pa. 232, 82 Atl. 93. The New York courts formerly held with the minority until jurisdiction was given them by statute. See *In re Rappleye,* 43 App. Div. 84, 59 N. Y. Supp. 338; *People ex rel. Singer* v. *Knickerbocker Trust Co.,* 38 Misc. 446, 77 N. Y. Supp. 1000. While it refuses a stockholder the writ of mandamus to enforce his right to inspect the books of a foreign corporation, the Pennsylvania court rather inconsistently grants such relief to a director. *Kinney* v. *Mexican Plantation Co., supra; Machen* v. *Machen, etc., Mfg. Co.,* 237 Pa. 212, 85 Atl. 100. This ruling is put on the ground that a director's right is superior to that of a stockholder. But if, as under the Pennsylvania rule, the granting of such relief to a stockholder is an interference with the internal affairs of the corporation, it would appear that the same relief granted to a director would be a similar interference. Mandamus was granted on the petition of a stockholder in a foreign corporation to compel the directors of whom the court had jurisdiction to give the petitioner permission to inspect the corporate property situated in another state. *Hobbes* v. *Tom Reed, etc., Co.,* 164 Cal. 497, 129 Pac. 781, 43 L. R. A. (N. S.) 1112. Indeed the later cases seem to consider the question of exercising jurisdiction over foreign corporations rather from the standpoint of the court's power to enforce its decrees, than as to whether the decree will interfere with the internal management of the corporation. See *State ex rel. Watkins* v. *North American, etc., Co. Ltd.,* 106 La. 621, 31 South. 172, 87 Am. St. Rep. 309; *Babcock* v. *Farwell,* 245 Ill. 14, 91 N. E. 683; *Beard* v. *Beard,* 66 Or. 512, 133 Pac. 797.

Obviously, the decision in the principal case is not in harmony with the rule as laid down in *North State, etc., Mining Co.* v. *Field, supra.* But if we concede the test of jurisdiction in such cases as this to be ability of the court to enforce its decrees, the holding in the principal case would seem to be sound.

CORPORATIONS—LIABILITY FOR TORTS OF AGENT—SLANDER.—In an effort to recover stolen property, subordinate servants of defendant corporation uttered slanderous words of plaintiff in the presence of the general manager of the corporation. *Held,* defendant is not liable. *Flaherty* v. *Maxwell Motor Co.* (Mich.), 153 N. W. 45.

The opinion was once prevalent that corporations could not be held liable in tort for wrongs committed *ultra vires. Orr* v. *Bank of United States,* 1 Ohio 370, 13 Am. Dec. 588; *Gillett* v. *Missouri Valley Ry. Co.,* 55 Mo. 315, 17 Am. Rep. 653. The contrary is now settled beyond question. *Salt Lake City* v. *Hollister,* 118 U. S. 256; *Vinas* v. *Merchants Mut. Ins. Co.,* 27 La. Ann. 367. A corporation is liable for the tort of its servant precisely as is a natural person. *Brokaw* v. *New Jersey R. R.*

Co., 32 N. J. L. 328; *Southern Express Co.* v. *Platten*, 93 Fed. 936; *Savannah Electric Co.* v. *Wheeler*, 128 Ga. 550, 58 S. E. 38. The doctrine formerly obtained that a corporation was not liable for slander uttered by its servant. *Childs* v. *Bank of Missouri*, 17 Mo. 213. This is at the present time an obsolete principle. *Hussey* v. *Norfolk S. R. Co.*, 98 N. C. 34, 3 S. E. 923, 2 Am. St. Rep. 312. At common law, the test of responsibility of the master for the wrongful or negligent act of the servant is whether or not the servant acted within the scope of his employment. *Fields* v. *Lancaster Cotton Mills*, 77 S. C. 546, 58 S. E. 608, 122 Am. St. Rep. 593, 11 L. R. A. (N. S.) 822. And this question is for the jury. *Rounds* v. *Delaware L. and W. R. R. Co.*, 64 N. Y. 129, 21 Am. Rep. 597.

There appears to be a tendency to distinguish the law governing the liability of a corporation for the slanderous utterances of its servants from the general rule governing the liability of a corporation for torts, committed by its agents. Thus the corporation's liability is made to depend upon the relationship existing between the defendant and the plaintiff. It is then a question whether or not the corporation owed a special duty to the plaintiff. *Sawyer* v. *Norfolk R. R. Co.*, 142 N. C. 1, 54 S. E. 793. A corporation is not liable for the slanderous utterances of its servant unless the servant was expressly authorized to speak the slanderous words or his act had been subsequently ratified. The courts ascribe the act of the agent to personal malice rather than to an act performed within the scope of his employment. *Stewart Dry Goods Co.* v. *Heuchtker*, 148 Ky. 228, 146 S. W. 423; *Singer Manufacturing Co.* v. *Taylor*, 150 Ala. 574, 43 South. 210, 124 Am. St. Rep. 90, 9 L. R. A. (N. S.) 929; *Jackson* v. *Atlantic Coast Line R. R. Co.*, 8 Ga. App. 495, 69 S. E. 919. The reason for this decision seems to be that there can be no agency to slander, and as a corporation can act only through its agents, it has not the capacity for committing that wrong. *Behre* v. *Nat. Cash Reg. Co.*, 100 Ga. 213, 27 S. E. 986, 62 Am. St. Rep. 320. If there can be no agency to slander, it would seem inconsistent to hold that a corporation is liable for the slanderous utterances of its agents when the act is expressly authorized or subsequently ratified by the corporation.

The liability of a corporation for malicious libel published by an agent within the scope of his employment is generally recognized. *Behre* v. *National Cash Reg. Co., supra; Fogg* v. *Boston and S. R. Corp.*, 148 Mass. 513, 20 N. E. 109, 12 Am. St. Rep. 583. Some cases refuse to recognize a distinction between written and oral slander, and where the agent acts within the scope of his employment the corporation is held liable, regardless of previous authorization or subsequent ratification. *Rivers* v. *Yazoo and M. V. R. Co.*, 90 Miss. 196, 43 South. 471, 9 L. R. A. (N. S.) 931; *Palmer* v. *Manhattan R R. Co.*, 133 N. Y. 261, 30 N. E. 1001, 28 Am. St. Rep. 632, 16 L. R. A. 136; see *Waters-Pierce Oil Co.* v. *Bridwell*, 103 Ark. 345, 147 S. W. 64. A corporation is liable in damages for the publication of a libel as it is for other tort. To establish its liability the publication must be shown to have been made by its authority, or to have been ratified by it, or to have been made by one of its servants or agents in the course of the business in which

he was employed. And the same is true as to slander. See NEWELL, SLANDER AND LIBEL, 3rd ed., 436. There seems to be no good reason for distinguishing slander from other willful torts. See *Hypes* v. *Southern Ry. Co.*, 82 S. C. 315, 64 S. E. 395, 21 L. R. A. (N. S.) 873.

CORPORATIONS—STOCKHOLDER'S SUITS—PLEADINGS.—A stockholder petitioned in equity in behalf of the corporation for remedial relief from the directors' alleged negligent mismanagement of the corporate property. The bill did not show either that the negligent directors controlled the corporation or that the petitioning stockholder had made sufficient application within the corporation to have that body, as the proper party, bring the suit. *Held,* a demurrer to the bill should be sustained. *Bartlett* v. *New York, N. H. & H. R. Co.* (Mass.), 109 N. E. 452. See NOTES, p. 62.

HIGHWAYS—NEGLIGENCE—LIABILITY OF COUNTIES AND COUNTY OFFICIALS.—The highway commissioners of defendant county negligently left one of its highways in a defective condition. Plaintiff's intestate was killed by reason of the defect, whereupon the plaintiff brought action both against the county and against the commissioners personally. *Held,* neither the county nor the commissioners are liable. *Snethen* v. *Harrison County* (Iowa), 152 N. W. 12. See NOTES, p. 56.

INSURANCE—FIRE INSURANCE—SUBROGATION OF INSURER.—The defendant insured, with the plaintiff company, certain mortgaged property against loss by fire, the policy being payable to the mortgagee as his interest might appear. The property was destroyed within the terms of the policy; and, having paid the mortgagee, the plaintiff claims subrogation to his rights against the mortgagor. *Held,* the insurer is not entitled to subrogation. *Milwaukee Ins. Co.* v. *Ramsey* (Ore.), 149 Pac. 542.

A fire insurance contract is strictly a contract of indemnity. *Hedger* v. *Union Ins. Co.*, 17 Fed. 498; *Chickasaw County Ins. Co.* v. *Weller*, 98 Ia. 731, 68 N. W. 443. And therefore, while the insured should be fully indemnified within the limits of the policy, he should never be allowed to profit by the loss. *Chickasaw County Ins. Co.* v. *Weller, supra.* It is on this theory that the insurer is, by the great weight of authority, subrogated to the mortgagee's rights against the mortgagor when the former insures his own interests separately; otherwise the insured mortgagee could collect his debts twice—both from the insurer and from the mortgagor. *Thornton* v. *Enterprise Ins. Co.*, 71 Pa. St. 234; *Ulster Co. Savings Inst.* v. *Leake*, 73 N. Y. 161, 29 Am. Rep. 115; *Sussex Co. Mut. Ins. Co.* v. *Woodruff*, 26 N. J. L. 541.

Where, as in the principal case, the mortgagor procures the insurance at his own expense, designating the mortgagee as beneficiary, the authorities unanimously agree that the insurer is not entitled to subrogation, but that the amount paid the mortgagee goes to reduce the mortgage debt. This seems clearly correct, since the mortgagor should certainly have the benefit of a contract to which he is a party, and the consideration for which has been paid by him. *Pendleton* v. *Elliott*, 67 Mich. 496, 35 N. W. 97; *Pearman* v. *Gould*, 42 N. J. Eq. 4, 5 Atl. 811.